

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SENIOR HOUSING ASSISTANCE
GROUP,

Plaintiff,

v.

AMTAX HOLDINGS 260, LLC, et al.,

Defendants.

No. 2:17-cv-01115-RSM

**[PROPOSED] PLAINTIFF SENIOR
HOUSING ASSISTANCE GROUP'S
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

AMTAX HOLDINGS 260, LLC, et al.,

Counter-Plaintiffs,

v.

SENIOR HOUSING ASSISTANCE
GROUP, et al.,

Counter-Defendants.

I. INTRODUCTION

This matter was tried to the Court on March 4-7, 2019. Plaintiff was represented by attorneys Laurie Lootens Chyz, Jake Ewart, and Jessica Kerr. Defendants were represented by attorneys Christopher Caldwell, Eric Pettit, Miguel Gradilla, and Mallory Gitt Webster. The Court heard testimony from the following witnesses: Jay Woolford (live), Bryan Park

*Plaintiff Senior Housing Assistance Group's
Findings of Fact and Conclusions of Law
(No. 2:17-cv-01115-RSM) - 1*

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(live), and Stephen Smith (by deposition) for plaintiff; and Ryan Trane (live) for defendants. The Court considered exhibits admitted into evidence and the stipulation filed at Dkt. 77. The Court has previously granted summary judgment in part on certain issues. Dkt. 142.

This case is now before the Court on plaintiff's action for a declaratory judgment confirming, under the language of the relevant contracts and Washington law, that its contractual special rights of first refusal to purchase the senior housing apartment projects at issue were properly triggered and effectively exercised. Having heard the testimony of the witnesses, considered the exhibits admitted at trial, and heard the arguments of counsel, the Court enters judgment in favor of plaintiff.

II. CREDIBILITY OF THE WITNESSES

"In an action tried on the facts without a jury . . . the court must find the facts specially and state its conclusions of law separately." Fed. R. Civ. P. 52(a). The trial court is empowered to judge the credibility of the witnesses. *See Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663, 665 (9th Cir. 1996); *Zivkovic v. S. Cal. Edison Co.*, 105 Fed. Appx. 892, 893 at n.1 (9th Cir. 2004) (citing *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 575, 84 L. Ed. 2d 518, 105 S. Ct. 1504 (1985)).

The Court specifically finds that the witnesses Jay Woolford and Bryan Park were credible. Their answers during testimony were complete and appeared honest, and their demeanor on the witness stand leads the Court to conclude that they were truthful.

III. FINDINGS OF FACT

The Court incorporates by reference the facts stated in its Order re: Motions for Summary Judgment, Dkt. 142, the admitted facts in the Revised Pretrial Order, Dkt. 160, and the agreed facts in the Stipulation and Order Regarding Third-Party Offers to Purchase, Dkt. 77. The following additional findings of fact are made by the Court and are based upon a preponderance of the evidence presented at trial and the credibility analysis above.

1 **A. PARTIES**

2 1. Plaintiff Senior Housing Assistance Group (“SHAG”) is a Washington
3 nonprofit corporation with its principal place of business in Seattle, Washington. SHAG is
4 focused on providing affordable housing for seniors.

5 2. Defendants AMTAX Holdings 260 LLC; AMTAX Holdings 259, LLC;
6 AMTAX Holdings 261, LLC; and AMTAX Holdings 258, LLC are investor partners in the
7 senior housing projects at issue. Protech Holdings W, LLC is the special limited partner in
8 those projects. The Defendants are referred to collectively and individually as “AMTAX.”

9 3. Senior Housing Assistance Corporation (“SHAC”) is SHAG’s wholly-owned
10 subsidiary.

11 4. Plaintiff and defendants are parties to limited partnership agreements that
12 govern limited partnerships formed to develop and manage the affordable senior housing
13 projects at issue.
14

15 **B. BACKGROUND**

16 5. SHAG is a tax-exempt 501(c)(3) nonprofit corporation whose mission is to
17 provide affordable housing exclusively for low- and moderate-income elderly and disabled
18 individuals and households. SHAG accomplishes its mission by sponsoring or co-sponsoring
19 the development of affordable rental apartment communities for low- and moderate-income
20 seniors in the Puget Sound region and by operating those affordable rental apartment
21 communities. SHAG has participated in a number of affordable housing project partnerships
22 that have developed affordable rental apartment communities in the Puget Sound region,
23 sometimes in conjunction with its wholly-owned subsidiary, SHAC, and with others.

24 6. Each limited partnership at issue in this case (the “Project Partnerships”) owns
25 a “qualified low-income housing project” (the “Projects”) eligible for federal income tax
26 credits and other tax benefits under the Low Income Housing Tax Credit (“LIHTC”)
27 provisions of the Internal Revenue Code, 26 U.S.C. § 42 (“Section 42”).
28

1 7. Under the LIHTC program, equity investors make capital contributions to
2 project partnerships in exchange for receiving tax credits generated by the projects and project
3 partnerships. LIHTC projects generate tax credits for equity investors over a 10-year period,
4 and projects are subject to a 15-year compliance period during which they must be maintained
5 as affordable housing in order for the equity investors to avoid recapture of all or a portion of
6 their tax credits.

7 8. Defendants AMTAX Holdings 260 LLC; AMTAX Holdings 259, LLC;
8 AMTAX Holdings 261, LLC; and AMTAX Holdings 258, LLC (sometimes referred to as the
9 “Investor Limited Partners”) are investor limited partners who provided equity capital
10 contributions in exchange for tax credits and certain other tax benefits, and acquired at least
11 98.99 percent interests in each of the Project Partnerships. Protech Holdings W, LLC is an
12 affiliate of the Investor Limited Partners and holds, as Special Limited Partner, a 0.01%
13 interest in each of the Project Partnerships.
14

15 9. The limited partnership agreements for each of the Project Partnerships include
16 a special right of first refusal (the “Special ROFR”), Section 7.4L, that grants to SHAG, as a
17 non-profit corporation and operator of each Project, the right to purchase the Project at a pre-
18 established price based on the statutory minimum purchase price determined under
19 Section 42. The statutory minimum purchase price determined under Section 42 is designed
20 to make the purchase affordable to the qualified non-profit sponsor. The Special ROFR for
21 each Project is exercisable during the 24-month period following the close of the 15-year
22 compliance period, after the Investor Limited Partners have claimed the benefit of the tax
23 credits for each Project.
24

25 10. At the time it entered the Project Partnerships, AMTAX agreed to a structure
26 in which SHAG was the holder of each Special ROFR and, in three of the four Project
27 Partnerships at issue at trial, either SHAG or SHAC was also the General Partner authorized
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1 to exercise all the powers granted to the General Partner under the limited partnership
2 agreements.

3 11. Because SHAG's Special ROFR has a pre-established price, there is no benefit
4 to the Project Partnership in seeking to maximize the price offered by a third party to purchase
5 any particular Project unless SHAG's Special ROFR rights have lapsed, or SHAG has
6 declined to exercise its Special ROFR for the Project.

7 12. Under the limited partnership agreements at issue, the sale of a Project in
8 connection with an exercise of SHAG's Special ROFR is not subject to prior approval by
9 AMTAX. The General Partners in the Project Partnerships are authorized, without
10 AMTAX's direct or indirect consent, to sell the Projects to SHAG pursuant to an exercise of
11 SHAG's Special ROFR.

12 13. SHAG has exercised its Special ROFR for each Project at issue, and each
13 General Partner in each Project Partnership has consented, and continues to consent, to the
14 sale of each project to SHAG.
15

16 **C. THE PROJECT PARTNERSHIPS**

17 **The Meridian Court Project**

18 14. The Meridian Court Apartments Project ("Meridian Court") is a 200-unit
19 affordable retirement community located in Federal Way, Washington, serving exclusively
20 low- and moderate-income elderly and disabled persons with household incomes at or below
21 60% of the area median gross income. Meridian Court is a Qualified Low-Income Housing
22 Project under Section 42.

23 15. The owner of Meridian Court is the Meridian Court Apartments Limited
24 Partnership, a Washington limited partnership.

25 16. Steel Lake Enterprises, LLC ("Steel Lake") is the General Partner of the
26 Meridian Court Apartments Limited Partnership. Bryan Park is authorized to act and speak
27 on behalf of Steel Lake.
28

1 17. AMTAX Holdings 260, LLC is the Investor Limited Partner of the Meridian
2 Court Apartments Limited Partnership.

3 18. Protech Holdings W, LLC is the Special Limited Partner of the Meridian Court
4 Apartments Limited Partnership.

5 19. The Meridian Court Apartments Limited Partnership is governed by the
6 Meridian Court Apartments Limited Partnership Second Amended and Restated Agreement
7 of Limited Partnership dated as of November 12, 2002 (the “Meridian Court Limited
8 Partnership Agreement”).

9 20. The Meridian Court Limited Partnership Agreement, Section 7.4L, provides as
10 follows:

11
12 Notwithstanding Paragraphs 7.4J and 7.4K above, for a period of twenty-four
13 (24) months following the close of the Compliance Period as determined by
14 the Code, if (i) the Senior Housing Assistance Group (the “Purchaser”) is then
15 the Lessee and operator of the Apartment Complex pursuant to the Operating
16 Use Lease, and (ii) the Purchaser is then a qualified nonprofit organization as
17 defined under Section 42(h)(5)(C) of the Code, then the Purchaser shall have a
18 “Right of First Refusal” (the “Special ROFR”) to purchase the Project at a
19 purchase price (the “Purchase Price”) equal to the sum of (1) the minimum
20 purchase price as determined under Section 42(i)(7)(B) of the Code (the
21 “Statutory Minimum Purchase Price”) and (2) the amount of each of the items
22 set forth in Section 6.2B(ii), Paragraphs First through Seventh thereof, to the
23 extent that the amounts of such items are not already reflected in the Statutory
24 Minimum Purchase Price in order to avoid any duplication.

25 21. The 15-year compliance period for Meridian Court expired on December 31,
26 2012.

27 22. Sometime on or before December 18, 2014, Bryan Park, on behalf of Steel
28 Lake, contacted Stephen Smith, principal of SSRE Development, LLC (“SSRE”), by
telephone to invite SSRE to make an offer to buy Meridian Court. Mr. Smith and Mr. Park
had prior real estate dealings with one another, and Mr. Park understood Mr. Smith to be an
experienced and capable real estate investor.

23 23. Neither Mr. Park nor SHAG believed a third-party offer was necessary to
24 trigger SHAG’s Special ROFRs, but, based on his prior dealings with AMTAX’s managers

1 and his understanding of their reputation in the industry, Mr. Park concluded it would be wise
2 to try to obtain a third-party offer as part of a “belt and suspenders” approach in case AMTAX
3 decided to challenge a Special ROFR exercise by SHAG for Meridian Court.

4 24. Mr. Park supplied Mr. Smith with financial information and other background
5 on Meridian Court. Mr. Park told Mr. Smith about the existence of SHAG’s Special ROFR
6 and that SHAG might exercise it, but Mr. Park also told Mr. Smith that SSRE might still have
7 an opportunity to buy Meridian Court if SHAG did not exercise, or if SHAG exercised and
8 was itself looking to enter into a subsequent transaction with a new partner.

9 25. On December 18, 2014, Mr. Park sent Mr. Smith a draft purchase and sale
10 agreement for Meridian Court. Later that same day, Mr. Smith, on SSRE’s behalf, delivered a
11 signed copy of that Real Estate Purchase and Sale Agreement (the “Meridian PSA”) to Steel
12 Lake. Mr. Smith signed the Meridian PSA and set the offer price. That price was within the
13 range of values Mr. Park had recently assigned to Meridian Court in connection with a
14 presentation Mr. Park made to SHAG’s Board of Directors. Mr. Smith confirmed that, if the
15 Meridian Court Apartments Limited Partnership had executed the Meridian PSA, SSRE
16 Development would have been contractually bound by the Meridian PSA. Mr. Smith has not
17 complained about his dealings with Mr. Park or SHAG in connection with Meridian Court.

18 26. Steel Lake forwarded the Meridian PSA to the limited partners in the Meridian
19 Court Apartments Limited Partnership on December 29, 2014.

20 27. By letter dated December 29, 2014, Steel Lake exercised its option to purchase
21 Meridian Court pursuant to Section 7.4J of the Meridian Court Limited Partnership
22 Agreement. Steel Lake exercised its option for its own benefit, but was also aware that it
23 might supply a basis for SHAG’s Special ROFR exercise under the Meridian Court Limited
24 Partnership Agreement in the event SHAG were to exercise its Special ROFR and AMTAX
25 were to challenge that Special ROFR exercise. Steel Lake provided notice of its exercise to
26 AMTAX and SHAG and acknowledged that its exercise was subject to SHAG’s Special
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1 ROFR. Steel Lake still agrees its option exercise has been trumped by SHAG's Special
2 ROFR exercise.

3 28. AMTAX acknowledges that Steel Lake has effectively exercised its purchase
4 option.

5 29. On December 30, 2014, SHAG gave written notice to the Meridian Court
6 Apartments Limited Partnership that SHAG was exercising its Special ROFR under
7 Section 7.4L of the Meridian Court Limited Partnership Agreement. SHAG's Board of
8 Directors had by that time given SHAG's Executive Director, Jay Woolford, approval to
9 exercise SHAG's Special ROFR for Meridian Court. That same day, Steel Lake forwarded
10 SHAG's notice to the Investor and Special Limited Partners in that Partnership. As General
11 Partner, Steel Lake concluded that SHAG's Special ROFR had been properly exercised, and
12 Steel Lake had no objection to the sale of Meridian Court to SHAG pursuant to SHAG's
13 Special ROFR exercise and the terms of Section 7.4L. Steel Lake concluded that SHAG's
14 Special ROFR exercise had priority over Steel Lake's option exercise. Steel Lake still has no
15 objection to the sale of Meridian Court to SHAG pursuant to SHAG's Special ROFR exercise
16 and the terms of Section 7.4L.

17 30. AMTAX objected to SHAG's Special ROFR exercise, claiming the Special
18 ROFR had not been validly triggered because, among other things, the Project Partnership had
19 not accepted or countered the Meridian PSA before December 31, 2014. AMTAX also
20 contended that Steel Lake's option exercise did not trigger SHAG's Special ROFR under the
21 language of the Meridian Court Limited Partnership Agreement.

22 31. As of December 30, 2014, and continuing to the present, SHAG was the lessee
23 and operator of Meridian Court Apartment Complex pursuant to the Meridian Court operating
24 use lease, and was a qualified non-profit organization as defined under 26 U.S.C.
25 § 42(h)(5)(C).
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The Auburn Court Project

32. The Auburn Court Apartments Project (“Auburn Court”) is a 296-unit affordable retirement community located in the City of Auburn, Washington, serving exclusively low- and moderate-income elderly and disabled persons with household incomes at or below 60% of the King County area median gross income. Auburn Court is a Qualified Low-Income Housing Project under Section 42.

33. The owner of Auburn Court is Auburn North Associates Limited Partnership, a Washington limited partnership.

34. SHAG is the General Partner of the Auburn North Associates Limited Partnership.

35. AMTAX Holdings 259, LLC is the Investor Limited Partner of the Auburn North Associates Limited Partnership.

36. Protech Holdings W, LLC is the Special Limited Partner of the Auburn North Associates Limited Partnership.

37. The Auburn North Associates Limited Partnership is governed by the Auburn North Associates Limited Partnership Third Amended and Restated Agreement of Limited Partnership dated as of November 12, 2002 (the “Auburn North Limited Partnership Agreement”).

38. The Auburn North Limited Partnership Agreement, Section 7.4L, provides as follows:

Notwithstanding Paragraphs 7.4J and 7.4K above, for a period of twenty-four (24) months following the close of the Compliance Period as determined by the Code, if (i) the Senior Housing Assistance Group (the “Purchaser”) is then the Lessee and operator of the Apartment Complex pursuant to the Operating Use Lease, and (ii) the Purchaser is then a qualified nonprofit organization as defined under Section 42(h)(5)(C) of the Code, then the Purchaser shall have a “Right of First Refusal” (the “Special ROFR”) to purchase the Project at a purchase price (the “Purchase Price”) equal to the sum of (1) the minimum purchase price as determined under Section 42(i)(7)(B) of the Code (the “Statutory Minimum Purchase Price”) and (2) the amount of each of the items set forth in Section 6.2B(ii), Paragraphs First through Seventh thereof, to the

1 extent that the amounts of such items are not already reflected in the Statutory
2 Minimum Purchase Price in order to avoid any duplication.

3 39. The 15-year compliance period for Auburn Court expired on December 31,
4 2013.

5 40. As December 31, 2015 approached, SHAG was looking for opportunities to
6 address the objections AMTAX had raised in connection with SHAG's exercise of its Special
7 ROFR for Meridian Court. On December 10, 2015, Redwood Housing Partners, LLC
8 ("Redwood" or "RHP") independently reached out to Jay Woolford, SHAG's Executive
9 Director, by email with an unsolicited offer to purchase, for \$10.25 million, a low-income
10 senior housing project, Lakewood Meadows, that SHAG helped manage in Lakewood,
11 Washington.¹ When it received this offer, SHAG had no prior relationship with or knowledge
12 of Redwood.

13 41. After discussing Redwood's offer with SHAG's real estate broker,
14 Mr. Woolford responded. He stated that the Lakewood Meadows project was still within its
15 compliance period and was not for sale, but he noted that there was a property in Auburn,
16 Washington that had met its fifteen-year compliance period. Mr. Woolford added, "I can't
17 say what we plan to do, but if you want to consider an LOI, we will look at it." Nick Boehm
18 of Redwood recognized this property as the "Auburn Court Apartments" and asked if
19 Mr. Woolford would be willing to share financial information with Redwood. In response,
20 Mr. Woolford sent Mr. Boehm a copy of a draft audit for Auburn Court.

21 42. On December 14, 2015, after reviewing the draft audit for Auburn Court,
22 Redwood sent SHAG a letter of intent for Auburn Court (the "Redwood Letter of Intent for
23 Auburn Court") offering to purchase Auburn Court for \$21.5 million, all cash, free and clear.
24 Mr. Boehm emphasized Redwood's willingness to "ensure closing in a timely manner."
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28 ¹ Testimony from Redwood is set forth in the Stipulation and Order Regarding Third-Party Offers to Purchase
(Dkt. 77), filed by the parties in lieu of live testimony at trial.

1 Redwood prepared and signed the Redwood Letter of Intent for Auburn Court. Redwood had
2 no ulterior motive in making its purchase offer.

3 43. Meanwhile, Mr. Park had also telephoned Mr. Smith of SSRE to tell Mr. Smith
4 that there might be an opportunity to submit an offer to purchase the Auburn Court
5 Apartments. Mr. Smith expressed his willingness to consider such an offer. Over the phone,
6 and as with Meridian Court, Mr. Park supplied Mr. Smith with financial information and other
7 background on Auburn Court. Mr. Park told Mr. Smith about the existence of SHAG's
8 Special ROFR and that SHAG might exercise it, but Mr. Park also told Mr. Smith that SSRE
9 might still have an opportunity to buy Auburn Court if SHAG did not exercise, or if SHAG
10 exercised and was itself looking to enter into a subsequent transaction with a new partner.
11 Mr. Park then drafted a document titled "Real Estate Purchase and Sale Agreement" in
12 substantially the same form that Mr. Smith had used for SSRE's Meridian offer. Mr. Park
13 shared drafts in both Word and PDF format with Mr. Smith. After receiving the drafts,
14 Mr. Smith asked his assistant to sign and submit on his behalf a purchase and sale agreement
15 to purchase the Auburn Court Apartments for \$21 million (the "Auburn Court SSRE PSA").
16 Mr. Smith set the offer price. Mr. Smith's assistant sent the signed Auburn Court SSRE PSA
17 to Mr. Park on December 29, 2015, and Mr. Park then forwarded it on to Mr. Woolford.
18 Mr. Smith confirmed that he understood that, if the Project Partnership had signed the Auburn
19 Court SSRE PSA, SSRE would have been contractually bound by the Auburn Court SSRE
20 PSA. Mr. Smith has not complained about his dealings with Mr. Park or SHAG in connection
21 with Auburn Court.
22

23 44. SHAG forwarded the Redwood Letter of Intent for Auburn Court to the limited
24 partners in the Auburn North Associates Limited Partnership on December 29, 2015.

25 45. SHAG forwarded the Auburn Court SSRE PSA to the limited partners in the
26 Auburn North Associates Limited Partnership on December 30, 2015.
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46. On December 30, 2015, SHAG gave written notice to the Auburn North Associates Limited Partnership and that Partnership's Investor and Special Limited Partners stating that SHAG was exercising its Special ROFR under Section 7.4L of the Auburn North Limited Partnership Agreement. As of December 30, 2015, and continuing to the present, SHAG was the lessee and operator of the Auburn Court Apartment Complex pursuant to the Auburn Court operating use lease, and was a qualified non-profit organization defined under 26 U.S.C. § 42(h)(5)(C). SHAG, as General Partner, was and is willing to sell Auburn Court to SHAG pursuant to SHAG's Special ROFR exercise.

47. Through its attorney, AMTAX objected to SHAG's Special ROFR exercise for Auburn Court. AMTAX claimed SHAG had no right to exercise its Special ROFR because (1) "the purchase offers appear to have been shams," and (2) the attempted ROFR exercise was not preceded with a bona fide offer that "the seller [was] willing to accept."

48. Even after SHAG exercised its Special ROFR, Mr. Woolford and Redwood continued communicating with one another. Mr. Woolford maintained those communications because he believed Redwood was a serious, credible buyer that might be a valuable future business partner after SHAG and AMTAX were able to resolve their dispute. Mr. Woolford did not tell Redwood that SHAG held or had exercised a Special ROFR for Auburn Court. SHAG's dealings with Redwood were motivated both by a legitimate desire by SHAG to make use of its contractual Special ROFR rights, and by a legitimate desire to pursue potential new business partners. Redwood has not complained about SHAG's behavior.

The Boardwalk and WoodRose Projects

49. The Boardwalk Apartments Project ("Boardwalk") is a 284-unit affordable retirement community located in the City of Olympia, Washington, serving exclusively low- and moderate-income elderly and disabled persons with household incomes at or below 60% of the Thurston County area median gross income. Boardwalk is a Qualified Low-Income Housing Project under Section 42.

1 50. The owner of Boardwalk is Capitol Way Associates Limited Partnership, a
2 Washington limited partnership.

3 51. SHAC is the General Partner of the Capitol Way Associates Limited
4 Partnership.

5 52. AMTAX Holdings 261, LLC is the Investor Limited Partner of the Capitol
6 Way Associates Limited Partnership.

7 53. Protech Holdings W, LLC is the Special Limited Partner of the Capitol Way
8 Associates Limited Partnership.

9 54. The Capitol Way Associates Limited Partnership is governed by the Capitol
10 Way Associates Limited Partnership Third Amended and Restated Agreement of Limited
11 Partnership dated as of November 12, 2002 (the “Capitol Way Associates Limited Partnership
12 Agreement”).
13

14 55. The Capitol Way Associates Limited Partnership Agreement, Section 7.4L,
15 provides as follows:

16 Notwithstanding Paragraphs 7.4J and 7.4K above, for a period of twenty-four
17 (24) months following the close of the Compliance Period as determined by
18 the Code, if (i) the Senior Housing Assistance Group (the “Purchaser”) is then
19 the Lessee and operator of the Apartment Complex pursuant to the Operating
20 Use Lease, and (ii) the Purchaser is then a qualified nonprofit organization as
21 defined under Section 42(h)(5)(C) of the Code, then the Purchaser shall have a
22 “Right of First Refusal” (the “Special ROFR”) to purchase the Project at a
purchase price (the “Purchase Price”) equal to the sum of (1) the minimum
purchase price as determined under Section 42(i)(7)(B) of the Code (the
“Statutory Minimum Purchase Price”) and (2) the amount of each of the items
set forth in Section 6.2(B)(ii), Paragraphs First through Seventh thereof, to the
extent that the amounts of such items are not already reflected in the Statutory
Minimum Purchase Price in order to avoid any duplication.

23 56. The 15-year compliance period for Boardwalk expired on December 31, 2014.

24 57. The WoodRose Apartments Project (“WoodRose”) is a 197-unit affordable
25 retirement community located in the City of Bellingham, Washington, serving exclusively
26 low-income elderly persons with household incomes at or below 60% of the Whatcom County
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1 area median gross income. WoodRose is a Qualified Low-Income Housing Project under
2 Section 42.

3 58. The owner of WoodRose is Racine Street Associates Limited Partnership, a
4 Washington limited partnership.

5 59. SHAC is the General Partner of the Racine Street Associates Limited
6 Partnership.

7 60. AMTAX Holdings 258, LLC is the Investor Limited Partner of the Racine
8 Street Associates Limited Partnership.

9 61. Protech Holdings W, LLC is the Special Limited Partner of the Racine Street
10 Associates Limited Partnership.

11 62. The Racine Street Associates Limited Partnership is governed by the Racine
12 Street Associates Limited Partnership Second Amended and Restated Agreement of Limited
13 Partnership dated as of November 12, 2002 (the "Racine Street Associates Limited
14 Partnership Agreement").

15 63. The Racine Street Associates Limited Partnership Agreement, Section 7.4L,
16 provides as follows:

17
18 Notwithstanding Paragraphs 7.4J and 7.4K above, for a period of twenty-four
19 (24) months following the close of the Compliance Period as determined by
20 the Code, if (i) the Senior Housing Assistance Group (the "Purchaser") is then
21 the Lessee and operator of the Apartment Complex pursuant to the Operating
22 Use Lease, (ii) the Senior Housing Assistance Corporation is then a qualified
23 corporation with respect to the Purchaser (as defined under Section
24 42(h)(5)(D)(ii) of the Code) and is a General Partner, and (iii) the Purchaser is
25 then a qualified nonprofit organization as defined under Section 42(h)(5)(C) of
26 the Code, then the Purchaser shall have a "Right of First Refusal" (the "Special
27 ROFR") to purchase the Project at a purchase price (the "Purchase Price")
28 equal to the sum of (1) the minimum purchase price as determined under
Section 42(i)(7)(B) of the Code (the "Statutory Minimum Purchase Price") and
(2) the amount of each of the items set forth in Section 6.2B(ii), Paragraphs
First through Seventh thereof, to the extent that the amounts of such items are
not already reflected in the Statutory Minimum Purchase Price in order to
avoid any duplication.

64. The 15-year compliance period for WoodRose expired on December 31, 2015.

1 65. In early 2016, Reliant Group Management, LLC (“Reliant”) expressed interest
2 in purchasing Lakewood Meadows. Reliant’s Senior Vice President of Acquisitions, Sanjiv
3 Kakar, sent SHAG a letter expressing Reliant’s interest in acquiring Lakewood Meadows.
4 Throughout 2016, Mr. Woolford and Mr. Kakar communicated about whether there might be
5 an opportunity for Reliant to buy one or more LIHTC projects in which SHAG was involved.
6 Mr. Woolford and Mr. Kakar met in person for lunch, and Mr. Kakar drove by certain of the
7 Projects.

8 66. In October of 2016, Mr. Woolford asked Mr. Kakar what information Reliant
9 would need to evaluate possible offers for Boardwalk and WoodRose. Mr. Woolford
10 provided Reliant various information at Mr. Kakar’s request throughout October of 2016, and
11 Mr. Kakar offered to set up a call to “talk pricing” in early November 2016. Among other
12 things, Mr. Woolford provided Reliant with financial reports, rent rolls, utility allowance
13 schedules, and regulatory agreements relating to Boardwalk and WoodRose.

14 67. On November 5, 2016, Reliant signed and sent Mr. Woolford detailed offering
15 packages to purchase Boardwalk and WoodRose, along with documents describing Reliant’s
16 financial resources. Reliant offered to purchase WoodRose for \$15.7 million and Boardwalk
17 for \$23.6 million. Reliant had completed its underwriting before sending its offering
18 packages and noted a history of closing LIHTC acquisitions on time at the original offering
19 price. Reliant had no ulterior motives in making these offers for WoodRose and Boardwalk.
20

21 68. Mr. Woolford is SHAC’s Executive Vice President. SHAC, as General
22 Partner of the Capitol Way Associates Limited Partnership, forwarded Reliant’s Boardwalk
23 offering package to the limited partners in the Capitol Way Associates Limited Partnership on
24 November 17, 2016. SHAC, as General Partner of the Racine Street Associates Limited
25 Partnership, also forwarded Reliant’s WoodRose offering package to the limited partners in
26 the Racine Street Associates Limited Partnership on November 17, 2016.
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69. On November 18, 2016, SHAG gave written notice to the Capitol Way Associates Limited Partnership and that Partnership's Investor and Special Limited Partners that SHAG was exercising its Special ROFR under Section 7.4L of the Capitol Way Associates Limited Partnership Agreement to purchase Boardwalk. SHAC, as General Partner, was and is willing to sell Boardwalk to SHAG pursuant to SHAG's Special ROFR exercise.

70. On November 18, 2016, SHAG gave written notice to the Racine Street Associates Limited Partnership and that Partnership's Investor and Special Limited Partners that SHAG was exercising its Special ROFR under Section 7.4L of the Racine Street Associates Limited Partnership Agreement to purchase WoodRose. SHAC, as General Partner, was and is willing to sell WoodRose to SHAG pursuant to SHAG's Special ROFR exercise.

71. As of November 18, 2016, and continuing to the present, SHAG was the lessee and operator of the Boardwalk Apartment Complex pursuant to the Boardwalk operating use lease, SHAG was a qualified non-profit organization defined under 26 U.S.C. § 42(h)(5)(C), and SHAC was SHAG's wholly-owned subsidiary.

72. As of November 18, 2016, and continuing to the present, SHAG was the lessee and operator of the WoodRose Apartment Complex pursuant to the WoodRose operating use lease, SHAG was a qualified non-profit organization defined under 26 U.S.C. § 42(h)(5)(C), and SHAC was SHAG's wholly-owned subsidiary.

73. AMTAX again objected to SHAG's Special ROFR exercises. In a letter from its attorney, AMTAX maintained that Reliant's offers were insufficient to trigger SHAG's Special ROFRs because the partnerships had not "formed the requisite intent to sell the projects" or "provided the requisite written consent to accept Reliant's offers."

74. Even after SHAG exercised its Special ROFRs, Mr. Woolford and Reliant continued communicating with one another. Mr. Woolford maintained those communications

1 because he believed Reliant was a serious, credible buyer that might be a valuable future
 2 business partner after SHAG and AMTAX were able to resolve their dispute. Mr. Woolford
 3 did not tell Reliant that SHAG held or had exercised Special ROFRs for Boardwalk or
 4 WoodRose. SHAG's dealings with Reliant were motivated both by a legitimate desire by
 5 SHAG to make use of its contractual Special ROFR rights, and by a legitimate desire to
 6 pursue potential new business partners. Reliant has not complained about SHAG's behavior.

7 **The Global Indemnity Agreement**

8 75. On multiple occasions from early 2015 through June 2016, AMTAX asked
 9 SHAG and Bryan Park for a copy of the Global Indemnity Agreement, a contract to which
 10 AMTAX was not a party. Mr. Woolford did not initially give AMTAX a copy of the Global
 11 Indemnity Agreement because he did not believe AMTAX was entitled to it, and because he
 12 believed AMTAX was requesting it in order to stall discussions about SHAG's Special
 13 ROFRs, or to contest the exercises of SHAG's Special ROFRs. Mr. Park did not give
 14 AMTAX a copy of the Global Indemnity Agreement for the same reasons, and because
 15 Mr. Park did not believe AMTAX had been responding to reasonable requests Mr. Park had
 16 made of AMTAX. SHAG provided AMTAX a copy of the Global Indemnity Agreement in
 17 June 2016. The dispute over production of the Global Indemnity Agreement was an ordinary
 18 dispute between partners. AMTAX has demonstrated no harm it suffered from not receiving
 19 a copy of the Global Indemnity Agreement sooner than it did.
 20

21 **IV. CONCLUSIONS OF LAW**

- 22 1. The Court has jurisdiction over this matter and the parties.
- 23 2. The Court has authority to issue declaratory relief pursuant to Rule 57 of the
 24 Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202, which permits this Court
 25 to declare the rights and other legal relations surrounding questions of actual controversy that
 26 exist between the parties.
 27
 28

1 3. There is an actual controversy between the parties regarding their rights and
2 obligations under the Partnership Agreements, including SHAG's Special ROFRs under
3 Section 7.4L.

4 4. Venue is proper in the United States District Court for the Western District of
5 Washington under 28 U.S.C. § 1391 because the Projects at issue in this case are properties
6 located in this District, and because the parties have agreed to venue and personal jurisdiction
7 in this District.

8 5. Following the Court's Order re: Motions for Summary Judgment filed on
9 February 19, 2019 (Dkt. 142), the sole issues remaining for trial were: 1) whether the third-
10 party offers were sufficient to trigger SHAG's Special ROFRs under Section 7.4L, and
11 2) whether SHAG is prevented from exercising its Special ROFRs due to the doctrine of
12 unclean hands.

13 6. In connection with the exercise of a right of first refusal, Washington law
14 requires a willingness to sell on the part of the property owner, and Washington law prohibits
15 the imposition of unreasonable restrictions on the exercise of a right of first refusal. For each
16 Project Partnership at issue, the General Partner, on behalf of the Project Partnership, was and
17 is willing to sell to SHAG pursuant to its Special ROFRs. As the Court has already
18 concluded, AMTAX does not have the right to consent to a sale in connection with the
19 exercise of SHAG's Special ROFRs.

20 7. The Meridian PSA was a bona fide third-party offer, and that offer was
21 sufficient to trigger SHAG's Special ROFR for Meridian Court. Solicitation of a purchase
22 offer does not prevent such an offer from triggering a right of first refusal, and, under the
23 terms and structure of the Meridian Court Limited Partnership Agreement and Washington
24 law, it was not necessary for the Project Partnership to form an intent to accept the Meridian
25 PSA before SHAG could exercise its Special ROFR. Under Washington law, and under the
26
27
28

1 contract at issue, the Meridian PSA meets the requirements for exercise of the Special ROFR
2 for Meridian Court.

3 8. The Meridian General Partner's exercise of its option to purchase the Meridian
4 Court Apartment Complex pursuant to Section 7.4J of the Meridian Court Limited Partnership
5 Agreement was also a sufficient and independent basis to trigger SHAG's Special ROFR for
6 Meridian Court under both Washington law and the contract at issue. Under the terms of the
7 Meridian Court Limited Partnership Agreement, SHAG's Special ROFR exercise has priority
8 over the General Partner's option exercise.

9
10 9. SHAG timely and effectively exercised its Special ROFR under Section 7.4L
11 of the Meridian Court Limited Partnership Agreement.

12 10. The Redwood Letter of Intent for Auburn Court was a bona fide third-party
13 offer, and that offer was sufficient to trigger SHAG's Special ROFR for Auburn Court.
14 Under the terms and structure of the Auburn North Limited Partnership Agreement and
15 Washington law it was not necessary for the Project Partnership to form an intent to accept
16 the Redwood Letter of Intent before SHAG could exercise its Special ROFR, nor was it
17 necessary for the Redwood Letter of Intent to be fully negotiated or enforceable. Under
18 Washington law, and under the contract at issue, the Redwood Letter of Intent for Auburn
19 Court meets the requirements for exercise of the Special ROFR for Auburn Court.

20 11. The SSRE PSA for Auburn Court was a bona fide third-party offer, and that
21 offer was sufficient to trigger SHAG's Special ROFR for Auburn Court. Solicitation of a
22 purchase offer does not prevent the offer from triggering a right of first refusal, and, under the
23 terms and structure of the Auburn North Limited Partnership Agreement and Washington law,
24 it was not necessary for the Project Partnership to form an intent to accept the SSRE PSA for
25 Auburn Court before SHAG could exercise its Special ROFR. Under Washington law, and
26 under the contract at issue, the SSRE PSA for Auburn Court meets the requirements for
27 exercise of the Special ROFR for Auburn Court.
28

1 12. SHAG timely and effectively exercised its Special ROFR under Section 7.4L
2 of the Auburn North Associates Limited Partnership Agreement.

3 13. The Reliant Boardwalk offering package was a bona fide third-party offer, and
4 that offer was sufficient to trigger SHAG's Special ROFR for Boardwalk. Under the terms
5 and structure of the Capitol Way Associates Limited Partnership Agreement and Washington
6 law it was not necessary for the Project Partnership to form an intent to accept the Reliant
7 Boardwalk offering package before SHAG could exercise its Special ROFR, nor was it
8 necessary for the Reliant Boardwalk offering package to have contained all material terms and
9 have been a fully negotiated purchase and sale agreement. Under Washington law, and under
10 the contract at issue, the Reliant Boardwalk offering package meets the requirements for
11 exercise of the Special ROFR for Boardwalk.
12

13 14. SHAG timely and effectively exercised its Special ROFR under Section 7.4L
14 of the Capitol Way Limited Partnership Agreement.

15 15. Reliant's WoodRose offering package was a bona fide third-party offer, and
16 that offer was sufficient to trigger SHAG's Special ROFR for WoodRose. Under the terms
17 and structure of the Racine Street Associates Limited Partnership Agreement and Washington
18 law it was not necessary for the Project Partnership to form an intent to accept the Reliant
19 WoodRose offering package before SHAG could exercise its Special ROFR, nor was it
20 necessary for the Reliant WoodRose offering package to have contained all material terms
21 and have been a fully negotiated purchase and sale agreement. Under Washington law, and
22 under the contract at issue, the Reliant WoodRose offering package meets the requirements
23 for exercise of the Special ROFR for WoodRose.
24

25 16. SHAG timely and effectively exercised its Special ROFR under Section 7.4L
26 of the Racine Street Associates Limited Partnership Agreement.

27 17. SHAG is not barred from exercising its Special ROFRs due to the doctrine of
28 unclean hands. The doctrine of unclean hands is not applicable in this case because plaintiff

1 seeks no equitable relief. In addition, defendants lack standing because they have not been
2 harmed.

3 18. Moreover, the evidence presented at trial does not support an unclean hands
4 defense. SHAG's dealings with third parties were motivated both by a legitimate desire by
5 SHAG to make use of its contractual Special ROFR rights, and by a legitimate desire to
6 pursue potential new business partners. None of the third-party offerors in this case has
7 complained about SHAG's behavior. SHAG's conduct with respect to the third parties does
8 not support a defense of unclean hands.

9 19. SHAG's delay in giving AMTAX a copy of the Global Indemnity Agreement
10 also does not support an unclean hands defense. SHAG gave AMTAX the Global Indemnity
11 Agreement nearly three years ago, and no harm came to AMTAX from any delay in receiving
12 it. The dispute over production of the Global Indemnity Agreement was an ordinary dispute
13 between partners that does not support an unclean hands defense or justify denying SHAG its
14 right to exercise its Special ROFRs for the projects at issue. The Court has already ruled on
15 summary judgment that the Global Indemnity Agreement does not prevent SHAG from
16 exercising its Special ROFRs.

17 20. At trial, AMTAX seemed to contend that SHAG had violated fiduciary duties
18 it owed to AMTAX in connection with SHAG's exercises of its Special ROFR rights. On
19 summary judgment, the Court dismissed all of AMTAX's claims related to alleged breaches
20 of fiduciary duties by SHAG and other parties. In any event, the evidence at trial does not
21 support any claims that SHAG breached fiduciary duties owed to AMTAX, and AMTAX's
22 fiduciary duty arguments provide no support for AMTAX's unclean hands defense. SHAG
23 was entitled to exercise its contractual Special ROFRs, and was entitled under the contracts
24 and Washington law to take the steps it took to do so. *E.g.*, RCW 25.10.441(5). Moreover,
25 actions that AMTAX contends SHAG should have taken to fulfill its fiduciary duties, such as
26 obtaining multiple third-party offers and seeking to maximize any third-party offer price,
27
28

1 would have resulted in no benefit to the Project Partnerships or AMTAX under the facts of
2 this case.

3 21. Defendants have not met their burden of proof for their affirmative defenses
4 and the affirmative defenses are hereby dismissed.

5 22. Plaintiff's request for declaratory judgment is GRANTED as follows:

6 A. SHAG's Special ROFRs for Meridian Court, Auburn Court, Boardwalk
7 and WoodRose were triggered; and

8 B. SHAG has properly and effectively exercised its Special ROFRs for
9 Meridian Court, Auburn Court, Boardwalk, and WoodRose.

10 23. Defendants/Counter-Plaintiffs/Third Party Plaintiffs' request for declaratory
11 relief on their remaining counterclaim is DENIED and the remaining counterclaim is hereby
12 dismissed with prejudice.
13

14 24. The Clerk shall enter judgment in favor of plaintiff in accordance with these
15 findings and conclusions, with costs awarded to plaintiff.

16 DATED this ____ day of _____, 2019.

17
18 _____
19 Honorable Ricardo S. Martinez
UNITED STATES DISTRICT COURT JUDGE

20 Presented by:

21 HILLIS CLARK MARTIN & PETERSON P.S.

22 By s/Jake Ewart

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

DATED this 15th day of March, 2019, at Seattle, Washington.

By s/ Jake Ewart

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